

Conditions for Certified Juveniles in Texas County Jails

By

Project Director

Michele Deitch, J.D., M.Sc.
Senior Lecturer, Lyndon B. Johnson School of Public Affairs,
University of Texas at Austin

Anna Lipton Galbraith, M.P.Aff. candidate
Lyndon B. Johnson School of Public Affairs

Jordan Pollock, J.D. Candidate
University of Texas School of Law

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Prof. Michele Deitch
Anna Lipton Galbraith
Jordan Pollock
The University of Texas at Austin
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EXECUTIVE SUMMARY

Purpose of the Report

The majority of juveniles who are accused of committing crimes in Texas are tried in juvenile courts, however, each year a small number of youth are transferred to the adult criminal justice system for trial. This process is referred to as certification. Until September 2011, Texas law required that all juveniles certified to be tried as adults were housed in adult county jails while they awaited their trials. In 2011, the 82nd Texas Legislature passed Senate Bill 1209 (SB 1209), which provided local juvenile boards the option to adopt a policy allowing for certified juveniles to be confined in juvenile detention centers rather than adult county jails. If the juvenile board adopts such a policy, the final decision as to where a particular youth would be housed would be up to the juvenile judge conducting the certification hearing.¹

Although SB 1209 allows juvenile boards to create an option for certified youth to be confined in juvenile detention centers, until now there has been little information about the conditions for certified juveniles who are awaiting trial in county jails across the state. Without this information, it may be difficult for juvenile boards to determine whether juvenile detention centers or county jails are best suited to house certified youth, and to adopt an appropriate policy in response to SB 1209. To gather more information about the conditions for certified juveniles in Texas county jails, we worked with the Texas Commission on Jail Standards (TCJS) to conduct a survey of county jails in Texas that have experience housing certified juveniles. The survey focused on five key areas: housing, contact with adults, out-of-cell time, educational programming, and other programming.

This report aims to provide a clearer picture of the conditions for certified juveniles in county jails based on the findings of this survey. The report provides a comprehensive assessment of how certified juveniles are housed in county jails in Texas, and the challenges faced by jail administrators when they confine certified youth. This information should help inform juvenile boards as they consider how to implement SB 1209, and can also inform policy makers, state and county agencies, and advocates in future discussions about the most appropriate way to manage the confinement of certified juveniles.

Major Survey Findings²

1) There were significantly fewer certified juveniles being held in county jails during the survey time period (September and October 2011) than would have been anticipated based on data on statewide certifications from 2006 to 2010.

Jail officials responding to the survey indicated that 34 certified juveniles were being housed in the jails in October and November of 2011, while certification data indicates that over 200 youth were certified across

1. Texas Family Code § 51.12, as modified by SB 1209, available at Texas Legislature Online, http://tx.opengovernment.org/system/bill_documents/001/188/339/original/SB01209S.htm?1308732336.

2. All of the findings presented in this section of the report are based on the survey about conditions for certified juveniles that we conducted in collaboration with the Texas Commission on Jail Standards (TCJS). The survey findings reflect the responses of 41 Texas adult county jails. (LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011 (hereinafter "Survey"). See Appendix A for a copy of the survey instrument.

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the state each year between 2006 and 2010.³ The snapshot of the certified juvenile population during the survey time period is not necessarily indicative of the total number of certified juveniles held over the course of a year. However, it is notable that the certified juvenile population reported by the surveyed jails is still significantly lower than would have been anticipated given that many certified youth spend 6 months to one year awaiting their trials, and based on the annual certification numbers from previous years. This snapshot of the certified juvenile population suggests that SB 1209 may have relevance for a smaller number of youth than would have been anticipated based on statewide certification numbers for previous years.

2) Many certified youth confined in county jails in Texas come into contact with adults. In 11 jails, youth are sometimes or always housed with adults. In 12 additional jails, youth are housed separately but come into contact with adults during out-of-cell time. Only 18 jails seek to keep youth separate from adults at all times, though there still may be some incidental contact.

Of the 41 jails that responded to the survey, 30 jails are housing juveniles in single or separation cells and 11 jails sometimes or always house youth with adults. However, housing in a single or separation cell does not mean that a youth will not come into contact with adults in other parts of the jail, including showers, toilets, dining facilities, common areas, recreational activities, educational classes, other programming, and the medical wing. These periods of contact with adults may put youth at risk for physical and sexual abuse. National research indicates that juveniles in adult facilities are five times more likely to be victims of sexual abuse and rape than youth who are kept in the juvenile system.⁴ National research also suggests that juveniles who are in adult facilities are 50% more likely than adults to be physically attacked by fellow inmates with a weapon of some sort.⁵ Jails in Texas provide varying degrees of supervision for certified youth during periods of contact with adults, with 11 jails providing no special supervision for youth when they are in contact with adults.

3) The majority of certified youth confined in county jails are held in isolation for long periods of time.

Of the 41 jails that responded to the survey, 25 reported providing youth with 1 hour or less of out-of-cell time per day. Given that the majority of jails are housing youth in single or separation cells, the limited amount of out-of-cell time reported indicates that youth are spending most of their time in isolation. The majority of jails also reported that the average length of stay in the county jail for certified youth is 6 months to longer than 1 year, suggesting that youth are experiencing this isolation over a long period of time. The fact that a youth may remain in a cell for 23 hours a day with only one hour of out-of-cell time, potentially with no access to the fresh air or sunlight, may have grave consequences for a youth's mental stability and physical health.

4) Certified youth confined in county jails have extremely limited access to educational classes and to the services and programming that they need.

Of the jails that responded to the survey, only 54% have formal educational programs of any kind, and the average number of hours of educational programming available for certified juveniles is very limited. Of the jails that do have formal educational programs, 13 provide youth with the option to attend classes for less

3. Texas Juvenile Probation Commission, *The State of Juvenile Probation Activities in Texas, 2006-2010*, (Austin, TX: Texas Juvenile Probation Commission, 2007, 2009, 2010, 2011) (hereinafter "*The State of Juvenile Probation Activities in Texas, 2006-2010*"). At the time of our study, data on statewide certifications was only available through 2009, so the survey sample was designed using only data from those four years. However, the Texas Juvenile Justice Department published the statewide certification data for 2010 after the survey was conducted, and we were able to compare the information that we collected to statewide certification from 2006 to 2010

4. Prison Rape Elimination Act of 2003, PL 108-79, 117 Stat. 972 (2003).

5. Jeffrey Fagan, Martin Forst and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of Treatment-Custody Dichotomy," *Juvenile and Family Court*, no.2 (1989), p. 10.

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than 5 hours a week; 5 provide classes for 5 to 10 hours per week; and 4 provide classes for more than 10 (but less than 20) hours per week. This lack of educational programming may violate both state compulsory education requirements and federal legislation. Given the extended length of time that many juveniles are held in these facilities, the lack of educational programming makes it very difficult for a juvenile to re-enter school at grade level upon release.

In addition, only 51% of the jails that responded to the survey provide certified juveniles with any additional programming beyond these very limited educational classes, and whatever minimal additional programming exists is primarily focused on substance abuse treatment. However, if a youth participates in any such program, he or she will be in the company of adult offenders, potentially putting the youth at risk. Like the lack of educational programming, the lack of mental health and behavioral programming, and the lack of any programming that targets the special needs of juveniles, may be detrimental to a juvenile's ability to reintegrate after he or she is released.

5) Housing certified youth is a burden on county jails, and requires additional staff time and financial resources beyond those required to house the general population of adult offenders.

Confining certified juveniles creates a number of challenges for jails. The architecture of many jails makes it difficult to separate juveniles from adult offenders, resulting in additional costs for the jails that choose to house juveniles separately. Some jails reported shutting down an entire section of the jail to house a juvenile, which results in a waste of bed space and increased costs for the jail. Minimizing contact with adults in other parts of the jail requires additional staffing beyond what is provided for a member of the general population, and transporting a juvenile in a no-contact jail requires significant staffing resources. In both surveys and follow-up interviews, jail officials noted that housing juveniles was a strain on the jail, and some noted that they wish these juveniles could be housed in settings more appropriate for them. One jail official commented in an interview: "I don't think children should be in adult jail. Adult jails are not equipped to handle children. Even those who have committed serious crimes, like capital murder, should be housed in juvenile facilities."

6) There are no standards governing the confinement of certified juveniles in adult county jails.

The survey responses revealed that jail administrators make housing decisions for certified juveniles on an *ad hoc* basis. Very few of the surveyed jails reported having procedures on how or where in the jail certified juveniles should be housed, and many jail administrators cited their lack of knowledge and conflicting information related to appropriate housing of certified youth. This *ad hoc* approach to housing certified youth in Texas county jails reflects the absence of clear guidelines on how certified youth should be housed by jails. This lack of guidance may result in housing conditions that pose significant risks to the safety of certified juveniles, and may make the jails vulnerable to litigation if youth continue to be housed in these settings.

Recommendations

1) Certified juveniles should be confined in juvenile detention centers rather than in adult jails while awaiting trial, so they can be housed with age-appropriate peers, participate in educational classes, and receive necessary services.

SB 1209 has provided juvenile boards with a policy option for addressing the challenges related to housing certified juveniles in county jails. The findings from our study should help inform juvenile boards as they examine their policies for housing certified juveniles. The survey findings demonstrate that Texas county jails are not equipped to meet the needs of certified juveniles, and suggest that juvenile boards should adopt a policy permitting judges to order these youth confined in juvenile detention facilities. Should juvenile boards not adopt such policies or should judges continue to send these youth to adult jails, policy makers may wish to consider amending the law to require confinement of certified youth in juvenile facilities in all but the most unusual circumstances.

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(2) The Texas Commission on Jail Standards should consider developing guidelines for jails on the appropriate approach for housing any certified juveniles who continue to be confined in adult jails.

Although the needs of juveniles can be better met in a juvenile detention center, some county jails may continue to house certified youth. In some counties, it may take time for juvenile boards to establish a policy in response to SB 1209, and in some counties the juvenile boards may choose not to allow the certified youth to be confined in juvenile detention facilities. Moreover, a judge may determine that a particular youth should be housed in the adult jail regardless of a general policy permitting confinement of certified juveniles in the juvenile detention center.

Given the inconsistency in jail practices across the state and the significant physical safety and mental health risks for juveniles who are housed in adult jails, the Commission on Jail Standards should consider developing guidelines for jails on the appropriate approach for managing certified juveniles.⁶ These standards should require the separation of certified juveniles from adults in housing assignments and in hygiene areas (showers and toilets), at least until age 17. However, there should not be a strict prohibition on juveniles coming into any contact with adult offenders, as this might limit the possibility for the youth to engage in any programmatic activities at all. The guidelines should also provide jails with direction on the physical, dietary, and educational needs of youth, and on special supervision requirements for this population.

6. The Attorney General of Texas has been asked for an opinion about how new language added to Texas Family Code §51.12 through SB 1209 affects the need for county jails to provide certified juveniles with strict sight and sound separation. An opinion is expected prior to May 1, 2012. The guidelines proposed in this recommendation are based on the survey findings and research about best practices, but could be affected by legal interpretation provided by the Attorney General.

PART I: INTRODUCTION

A. Purpose of the Report

Although the majority of juveniles who are accused of committing crimes in Texas are tried in juvenile courts, each year a small number of juveniles are transferred to the adult criminal justice system for trial. In Texas, this process of transferring juveniles to the adult criminal justice system is called certification. After a youth is certified by a juvenile court, he or she is typically held in an adult county jail while awaiting trial in an adult criminal court. If the certified youth is convicted in adult criminal court, the youth is transferred to adult prison.

Until now, there has been little information available about the conditions for certified juveniles who are awaiting trial in county jails across the state. National research indicates that youth confined in adult facilities are at much greater risk of physical and sexual assault than youth in juvenile detention facilities.⁷ Because juveniles are considered adults after certification, the federal statute requiring the separation of juveniles from adults in prisons and jails does not apply once a youth is certified. Jail officials in Texas have had the discretion to treat certified youth as adults and house them with the general population of adult offenders, or to provide special accommodations for them. However, little has been known about how jails handle certified juveniles in practice. In addition, there has been no data indicating how many certified juveniles are actually held in county jails annually.

In 2011, the 82nd Texas Legislature passed SB 1209, which provided juvenile boards the option to adopt a policy that would allow certified juveniles to be housed in that county's juvenile detention center rather than in the adult county jail, subject to a juvenile judge's placement determination in an individual case. Given the lack of information about this population, additional information about the conditions for certified juveniles in county jails was needed to inform county juvenile boards as they consider their response to SB 1209.

This report aims to provide a better understanding of the conditions for certified juveniles held in county jails in Texas—youth who are pre-trial and who are still presumed innocent. The findings of the report are informed by a survey of the majority of county jails in the state that have experience housing certified juveniles to determine the confinement conditions for those youth. The survey was conducted by the Texas Commission on Jail Standards, working in collaboration with the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin. This report provides a comprehensive assessment of how certified juveniles are housed in county jails in Texas, and the challenges county jail officials face when they confine certified juveniles. This information should help inform juvenile boards as they make their decisions regarding SB 1209, and also inform policymakers, state and county agencies, and advocates in future discussions about the appropriate pre-trial housing for certified juveniles.

B. Methodology

This project was conducted in collaboration with the Texas Commission on Jail Standards (TCJS), a state agency with a legislative mandate to establish minimum standards for the operation of county and municipal jails, and to monitor adherence to these standards. Working with TCJS officials, we designed a survey to collect information on a range of issues related to the conditions for certified juveniles from the Texas county jails that have historically housed them. The survey focused on five key areas: housing, contact with adults, out-of-cell time, educational programming, and other programming. Each jail was asked to describe its approach to these areas based on a range of options, or to provide supplementary information if a unique

7. National Prison Rape Elimination Commission, Report (June 2009), p. 18, <http://www.ncjrs.gov/pdffiles1/226680.pdf>; Jeffrey Fagan, Martin Forst and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of Treatment-Custody Dichotomy," *Juvenile and Family Court*, no.2 (1989), p. 10.

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approach was used. Jails were also given space to provide additional information related to each of the five areas, and to offer general comments about their experience housing certified juveniles. In addition, each jail was asked to provide information about the current number of certified juveniles in the jail. A copy of the survey is available in Appendix A of this report.

We reviewed data on the number of certifications in each county between 2006 and 2009, available from the Texas Juvenile Justice Department (TJJD), to determine which county jails would likely have experience housing certified youth. The data indicated that 53 counties had certified at least two juveniles between 2007 and 2009. We surveyed the jails in these 53 counties, based on an assumption that administrators in these jails would have relatively recent experience housing certified youth. It is also noteworthy that the TJJD data indicates that 162 of the 254 counties in Texas had no certifications between 2006 and 2009. This suggests that many jails in the state have no experience housing certified juveniles, and would be ill prepared if a youth were to be certified in their county. A list of the county jails surveyed is included as Appendix B of this report.⁸

TCJS distributed the survey to jail administrators in the selected counties, and collected their written responses to the survey questions. Of the 53 county jails that were surveyed, 50 completed and returned the survey (an extremely high 94% response rate), including all of the jails in counties that have historically certified significant numbers of juveniles. The 94% response rate for surveyed jails indicates that the majority of jails with experience housing certified juveniles are represented in the survey findings. Of the jails that completed the survey, 41 provided information about conditions for certified juveniles in their jails, and nine indicated that, despite the data about juveniles being certified in that jurisdiction, they did not in fact have experience housing certified juveniles in the jail.⁹ As a result, the survey findings summarized in this report reflect the responses from the 41 jails that provided information about the conditions for certified juveniles who had been housed in their jails (see Appendix C: County Jails Included in Survey Findings).

We assisted TCJS with analyzing the survey findings, and also conducted follow-up interviews with the majority of counties after receiving each survey. Through these conversations we clarified any ambiguous responses to the survey questions, and provided jail administrators the opportunity to provide us with additional information that may not have been captured under the scope of the survey. During these follow-up conversations with jail officials we also collected information about the number of certified juveniles housed in the last five years, and the average number of certified juveniles housed at one time. In addition, we toured one large urban county jail in October 2011 to see the section of the jail where certified juveniles are housed. During this tour, we met with the certified juveniles housed in the jail, and with the jail staff that are responsible for supervising them.

C. Structure of Report

This report will begin by providing a brief overview of the process for certifying a juvenile to be tried as an adult in Texas, including a summary of the existing data related to certifications in the state. The report will then present the findings of our survey on the conditions for housing certified juveniles in county jails, followed by a discussion of the implications of these findings. Finally, the report will provide recommendations for the consideration of policymakers and officials at the state and local levels, including the juvenile boards that have been tasked with determining whether they should adopt a policy allowing for the confinement of certified juveniles in juvenile detention centers while they are awaiting trial.

8. Because no data was yet available from TJJD for 2010 and 2011 at the time of the survey, we were limited to the information available from previous years. We selected the 53 county jails in an attempt to survey the majority of jails that have had experience housing certified juveniles in recent history, however, there may be a small number of jails with experience housing certified juveniles that were not surveyed. *The State of Juvenile Probation Activities in Texas, 2006-2010*.

9. There are a variety of reasons jails in counties where juveniles have been certified may not have experience housing certified juveniles: for example, certified youth may bond out; certified juveniles may already have turned 17 and are now considered adults; or certified juveniles may have been transferred to juvenile detention facilities under informal arrangements.

PART II: BACKGROUND

A. What is Certification?

In Texas, any youth who is under the age of 17 when his or her alleged offense is committed is under the jurisdiction of the juvenile court. Certification is the process by which a Texas juvenile court judge waives jurisdiction and transfers a youth to adult criminal court. For a youth to be certified, he or she must have been at least 14 years at the time of committing an alleged capital felony, 1st degree felony, or an aggravated controlled substance felony.¹⁰ A youth who is between the ages of 15 and 17 at the time of the alleged crime may be transferred for the above offenses as well as for a second degree felony, third degree felony, or a state jail felony.¹¹ Certification is only supposed to occur after a full investigation and hearing, although depending on the individual case and the juvenile's representative, this investigation and hearing may be abbreviated.¹² The request to certify usually comes from the prosecuting attorney, but the decision to certify is made by the juvenile court judge.¹³

Once a youth in Texas has been certified, he or she is considered to be an adult by the criminal justice system. As a result, the Juvenile Justice and Delinquency Prevention Act (JJDP A)—the federal law requiring the separation of juveniles from adults in detention—does not apply to certified juveniles.¹⁴ Prior to September 2011, Texas law prohibited housing certified youth in juvenile detention facilities, and certified youth were required to be housed in adult county jails while awaiting trial.¹⁵ However, there were no statutory provisions in Texas requiring that jails physically separate certified youth from adult offenders in the jails, leaving it to the discretion of jails to determine how certified youth should be housed.

Despite the fact that certified youth have been required to be confined in adult jails, very little has been known about the conditions in which these youth are being held. The standards set by TCJS do not include any specific regulations related to the conditions for housing certified juveniles, and TCJS has not historically monitored the confinement of certified youth.¹⁶ In 2009, the Houston Press published an article exposing the conditions for certified juveniles in the Harris County Jail, and specifically cited that youth were being held in isolation for long periods of time.¹⁷ The article highlighted the mental deterioration and suicidal tendencies experienced by many of these juveniles as a result of these conditions.¹⁸ However, beyond this limited media attention in Harris County, there was no information about conditions for certified youth held in other jails across the state.

10. Texas Family Code § 54.02.

11. Ibid.

12. Michele Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, (Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs, 2011), p. 6.

13. Texas Family Code § 54.02.

14. Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601. See more detailed discussion of this statute in Section B., *infra*.

15. See Texas Family Code § 51.12(h)(2010).

16. Texas Administrative Code, §37.9.251-301.

17. Chris Vogel, "For Their Own Good," *Houston Press*, May 28, 2009, <http://www.houstonpress.com/content/printVersion/1274177>.

18. Ibid.

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B. Federal Law Regarding Detention of Youths in the Adult Criminal Justice System

The federal Juvenile Justice and Delinquency Prevention Act (JJJDA) of 1974 was passed based on concerns that juvenile offenders were not receiving adequate rehabilitation services, and that this lack of effective rehabilitation was contributing to the rise in juvenile crime.¹⁹ Among other provisions, the JJJDA mandates that for a state to be eligible for federal juvenile justice initiative funding, the state may only house youth in adult facilities under specific circumstances, and for short periods of time.²⁰ The impact of this provision is that in practice states only house youth in adult facilities when it is not possible to house them in a juvenile facility. If the state houses a juvenile in adult facilities, the youth must be sight and sound separated from the adult population.²¹ The regulations define this separation as follows: “Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.”²²

This form of separation defined in JJJDA goes far beyond simply requiring that juveniles avoid contact with adult offenders, and requires strict separation of youth from adults in detention facilities. Although this strict separation of juveniles from adults mandated by JJJDA recognizes that juveniles face distinct safety risks in adult facilities, JJJDA does not specify provisions for juveniles who are certified as adults and are no longer considered juveniles by the criminal justice system.²³ This legal loophole for certified juveniles allows states nationwide, including Texas, to have state laws that permit housing of certified juveniles in adult facilities and in fact the federal regulations promulgated under the JJJDA explicitly exempt certified youth from the provisions of the Act.²⁴ As a result, Texas county jails and adult prisons have not had to comply with JJJDA sight and sound separation requirements for certified youth. This means that certified youth housed in Texas county jails may face physical safety risks that youth who have not been certified are protected from under JJJDA.

C. Risks for Youth Detained in Adult Facilities

Youth housed in adult facilities face elevated physical safety and mental health risks compared to their counterparts who are confined in juvenile detention. Physical safety and mental health risks are also much greater for youth in adult facilities than for adults housed in the same facilities. National research indicates that juveniles in adult facilities are 500% more likely to be victims of sexual abuse and rape than youth who are kept

19. 42 U.S.C. § 5601(a).

20. 42 U.S.C.A. § 5633(a)(13).

21. The regulations at 28 C.F.R. § 31.303(d)(1)(ii) provide: “In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.”

22. 28 C.F.R. § 31.303(d)(1)(i).

23. It should be noted although the JJJDA does not address the issue of certified youth directly, the regulations promulgated under the JJJDA do permit the housing of certified youth with adults. See 28 C.F.R. § 31.303(d)(1)(v).

24. 28 C.F.R. § 31.303(d)(1)(v). It is worth noting that the opposite scenario is also not prohibited under federal law—certified youth may be held in juvenile facilities. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has issued a formal opinion that approves such arrangements under the JJJDA. See Robert J. Flores, Memorandum from U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention: Compliance with Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 2002, August 18, 2008.

Background

in the juvenile system.²⁵ The long-term effects of sexual victimization are severe, particularly for adolescents. Victims of rape have increased rates of post-traumatic stress disorder, depression and suicide.²⁶ Moreover, according to national research, juveniles in adult facilities are 50% more likely than adults to be physically attacked by fellow inmates with a weapon of some sort.²⁷

Juveniles housed in adult facilities also experience significantly higher rates of mental illness than adults housed in the same facilities and their counterparts in juvenile detention. National research indicates that juveniles held in adult facilities have by far the highest suicide rate of any population held in adult jails,²⁸ and are 36 times more likely to commit suicide than youth in juvenile facilities.²⁹

Given the elevated physical safety risks and increased prevalence of mental health issues for juveniles housed in adult facilities, many states prohibit the housing of certified youth in adult facilities.³⁰ In Texas, certified youth have been historically housed in adult facilities despite these risks. However, the 82nd Legislature passed legislation that provides counties with an option to house pre-trial certified youth in juvenile detention centers on a case-by-case basis, creating an opportunity for counties to assess the most appropriate housing for certified juveniles who are awaiting trial.

D. Senate Bill 1209

In 2011, the 82nd Texas Legislature unanimously passed Senate Bill 1209 (SB 1209), authored by Senator John Whitmire and co-sponsored by a bi-partisan group of House members. SB 1209 changed the legal classification for certified juveniles so as to allow counties to house them in juvenile detention centers while they are awaiting trial. Governor Rick Perry signed the bill into law and it took effect on September 1, 2011.

SB 1209 modified the statute regarding detention of certified juveniles, Texas Family Code § 51.12, to state that if the certified youth is under 17 years of age, he or she will be “considered a child for the purposes of this subsection.”³¹ By specifying that a certified youth is “considered a child” under the statute, the law permits juvenile detention centers to keep certified youth in juvenile detention centers alongside non-certified juvenile offenders, an option that was previously unavailable because certified juveniles were classified as adults. However, SB 1209 requires that the local juvenile boards in each county either adopt or reject a policy allowing certified youth in their county to be confined in a juvenile detention center while awaiting trial.³² If the juvenile board adopts a policy allowing this option, the judge is permitted, but not required, to

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25. Prison Rape Elimination Act of 2003, PL 108-79, 117 Stat. 972 (2003). “Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities--often within the first 48 hours of incarceration.” 42 U.S.C.A. § 15601 (West).
 26. Prison Rape Elimination Act of 2003, 42 U.S.C.A. § 15601 (West).
 27. Jeffrey Fagan, et. al., “Youth in Prisons and Training Schools: Perceptions and Consequences of Treatment-Custody Dichotomy,” *supra* n.5, p.10.
 28. C.J. Mumola, “Suicide and Homicide in State Prisons and Local Jails,” *U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics* (Washington, D.C., August 2005).
 29. Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Washington, D.C., November 2007, p. 10 [hereinafter *Jailing Juveniles*].
 30. For example, Virginia, Pennsylvania, California, Kentucky, and Colorado all either prohibit the confinement of certified juveniles in adult jails or create a presumption that they will be held in juvenile detention facilities. See Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, pp. 37-38. Colorado is the most recent state to pass such a law regarding the removal of certified youth from adult jails; the Legislature adopted the policy unanimously in 2011. See Co Statutes §19-2-508. Moreover, at least 16 states confine certified youth in juvenile facilities rather than adult prisons after they are convicted. Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, p. 36, fn 93.
 31. Texas Family Code § 51.12, as modified by SB 1209, available at Texas Legislature Online, http://tx.opengovernment.org/system/bill_documents/001/188/339/original/SB01209S.htm?1308732336.

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order a certified youth to be held in the juvenile detention center.³³ If the juvenile board does not adopt such a policy, the judges are mandated to detain the juvenile in an adult jail awaiting trial.³⁴

E. Certification in Texas Today

The rates of certification across the state of Texas vary widely, with only 37% of the counties certifying any juveniles at all between 2006 and 2010.³⁵ These certifications occurred in counties with large urban centers, and also in counties that are predominantly rural. There are some large counties with urban centers such as El Paso, with a population of 800,000, which certified only one juvenile during this period,³⁶ while some smaller counties such as Jefferson, with a population of around 250,000, were among the top fifteen counties with the most certifications during this time period.³⁷ The data indicates that only 9% of the counties in Texas certified more than six juveniles over the course of the four-year period. In addition, Harris County and Dallas County certified exponentially more juveniles than any other counties.

Figure 1 below presents the 15 counties that had the largest number of certifications between 2006 and 2010. The data indicates that the 15 counties that certify the largest numbers of youth are not the 15 largest counties in the state. Both Travis County (the 5th largest county) and El Paso (the 6th largest county) are not included in the top 15, indicating that factors other than population density influence the number of juveniles certified as adults in a county.³⁸

The number of certifications per county between 2006 and 2010 suggest that only a small portion of the county jails in Texas were housing the states' certified juvenile population. In addition, the numbers demonstrate that certifications occur infrequently in the majority of counties. While there are 17 counties that had 10 or more certifications during this time period, 159 counties had no certifications, 30 counties had one certification, and 41 counties had 2 to 5 certifications over the 5-year period. These certification numbers suggest that while a small number of counties are certifying larger numbers of juveniles, 90% of the counties are certifying less than one juvenile per year, and many had no certifications. However, there is no data available on the numbers of these certified youth who were housed in county jails during this same time frame.³⁹

Based on the information available about which counties have certified juveniles over the last few years, we surveyed jail administrators in counties that certified at least two juveniles between 2007 and 2009 to collect information about the conditions for certified juveniles in these county jails. The survey findings aggregate information that was previously unavailable about the conditions for certified juveniles in Texas county jails.

32. Texas Human Resources Code § 152.0007, as modified by SB 1209.

33. Ibid.

34. Ibid.

35. *The State of Juvenile Probation Activities in Texas, 2006-2010*.

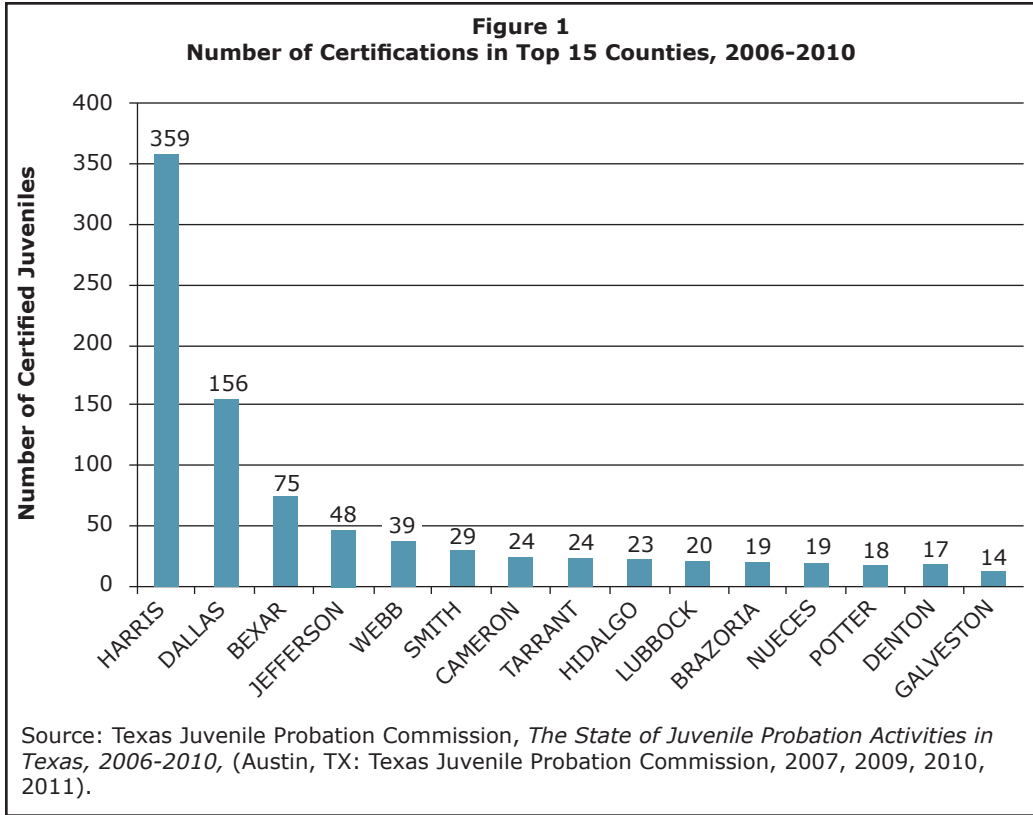
36. "Texas 2010 Census Data", Texas State Library and Archives Commission, <https://www.tsl.state.tx.us/ref/abouttx/popcnty12010.html/>; and *The State of Juvenile Probation Activities in Texas, 2006-2010*.

37. Ibid.

38. "2010 Census: Population of Texas Counties in Descending Order," *Texas State Library and Archives Commission*, Accessed on April 9, 2012 from <https://www.tsl.state.tx.us/ref/abouttx/popcnty32010.html>.

39. *The State of Juvenile Probation Activities in Texas, 2006-2010*.

Background



PART III: SURVEY FINDINGS

This section presents the findings of the survey on conditions for certified juveniles who are awaiting trial in adult county jails in Texas.⁴⁰

A. Number of Certified Juveniles in County Jails

Key Finding: There were significantly fewer certified juveniles being held in county jails during the survey time period (September and October 2011) than would have been anticipated based on the 2006 to 2010 data on statewide certifications.

Jail administrators were asked how many certified juveniles are currently being housed in their jail, and were also asked to estimate the total number of certified juveniles housed in 2010 and 2011. Jails reported housing significantly smaller numbers of juveniles at present, and in the previous two years, than would have been anticipated based on the 2006 to 2010 data.⁴¹ Table 1 below provides a list of each county we surveyed that reported holding certified juveniles, and the number of certified juveniles they reported holding during the survey time period; the table also includes the number of juveniles that were certified in each of these counties in 2010.

The snapshot of the certified juvenile population during the survey time period is not necessarily indicative of the total number of certified juveniles held over the course of a year. However, it is notable that the certified juvenile population reported by the surveyed jails is still significantly lower than would have been anticipated given that many certified youth spend six months to one year awaiting their trials (discussed in Section B below), and based on the annual certification numbers from previous years.

There are several potential explanations for this gap. First, although no official data is yet available for 2011, informal conversations with TJJD staff indicate that the number of certifications have decreased across the state in the past year. Second, once a youth turns 17 years old, he or she may be housed with the adult population regardless of certification status, since 17-year old defendants are automatically treated as adults under the law. Therefore, a portion of the certified population may have “aged into” the adult jail population and jail staff do not think of this group when asked to identify certified juveniles. Third, some certified juveniles may be released on bond, and are therefore not detained in county jails while they await trial. Finally, some youths’ cases may be disposed of quickly and thus they do not remain in the jail for lengthy periods of time.

Since the majority of jails responding to the survey were not holding certified juveniles during the survey time period, the jail staff provided information on how certified youth have been housed in the past. Jails that did not in fact have any experience housing certified juveniles were excluded from the survey findings.

40. All of the findings presented in this section of the report are based on the survey on conditions for certified juveniles that we conducted in collaboration with TCJS. The survey findings reflect the responses of 41 Texas county jails.

41. “*The State of Juvenile Probation Activities in Texas, 2006-2010*”. At the time of our study, data on statewide certifications was only available through 2010, so we were unable to compare the snapshot of the juvenile population collected through the survey to the certification numbers for 2011.

Conditions for Certified Juveniles in Texas County Jails

Table 1 On-Hand Certified Juvenile Population in County Jails September–October 2011		
County	On-Hand Certified Juvenile Population September–October 2011	Number of Juveniles Certified in 2010
Bell	1	3
Bexar	1	13
Brazoria	2	1
Cameron	6	12
Dallas	8	35
Galveston	2	2
Harris	4	53
Harrison	1	0
Jefferson	6	13
Lubbock	1	4
Smith	1	7
Travis	1	4
Total	34	144
<small>Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011; and Texas Juvenile Probation Commission, <i>The State of Juvenile Probation Activities in Texas, 2006-2010</i>.</small>		

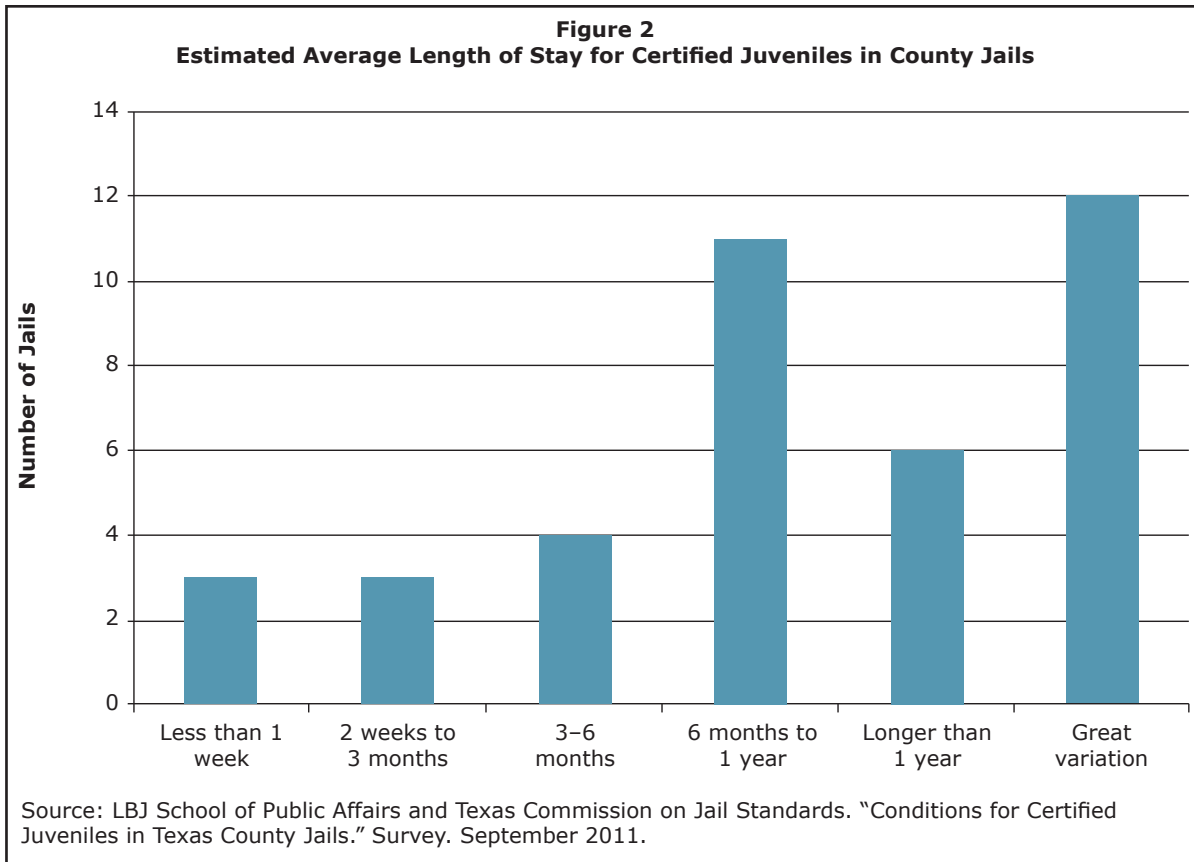
B. Length of Stay in County Jails

Key Finding: The jails that responded to the survey reported that the average length of stay for certified juveniles in county jails ranges from less than 1 week to more than 2 years. However, 42% of jails estimated that the average length of stay for certified juveniles was longer than 6 months.

The jails that responded to the survey estimated that the average length of stay for certified juveniles that are housed in their county jail varies from less than 1 week to more than 2 years. Figure 2 below provides a breakdown of the average length of stay estimated by the county jails.

Although many jail officials reported great variation in the length of time certified juveniles have historically spent in each jail, it is noteworthy that 11 jails estimated the average stay was 6 months to a year, and 6 jails estimated the average stay was longer than 1 year. This indicates that 42% of all jails that responded to the survey estimated an average length of stay longer than 6 months. In addition, one jail reported housing a certified juvenile for 889 days, and a youth in the jail we visited indicated that he had been in the jail for over two years. These estimates suggest that in many jails, juveniles are spending prolonged periods of time awaiting their trials.

Survey Findings



C. Housing

Key Finding: In 73% of the jails that responded to the survey, certified juveniles are being held in single or separation cells. However, this does not mean that certified juveniles are housed using sight and sound separation from adults.

County jail administrators were asked to identify how certified juveniles are housed. Specifically, the survey asked about the type of cells the juveniles are housed in (single or multi-occupancy), and whether they are housed in cellblocks or cells with other juveniles, or with adults. There are two distinct methods that jails use when housing certified juveniles. One group of jails treats certified juveniles exactly as they treat adults. A jail administrator working in this kind of jail noted that, "Housing determinations are strictly based on classification [and] crime. Juveniles are treated like adults once they are certified, and no special provisions are made for them based on their age."⁴²

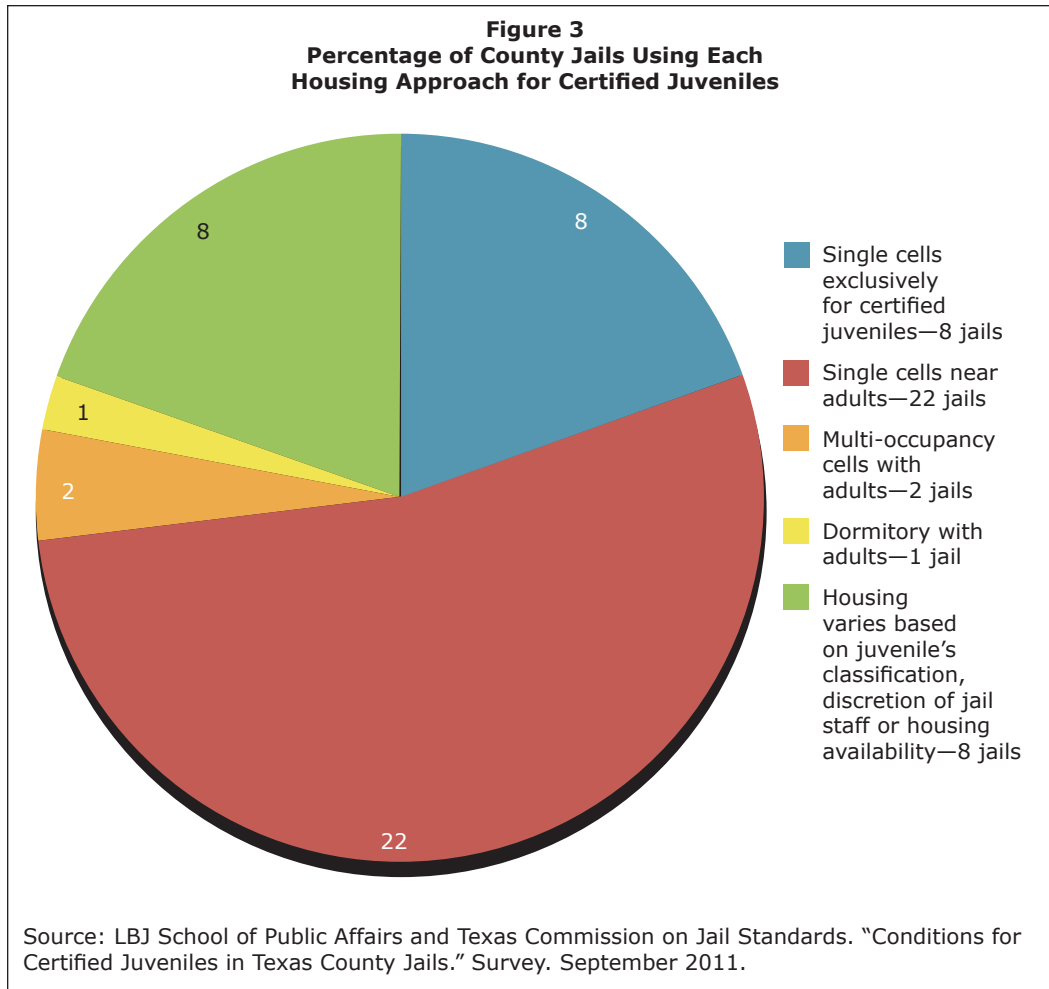
The other group of jails includes those that are making efforts to separate certified juveniles from adults in their housing. Jail administrators in these jails discussed the importance of separating certified juveniles for their physical safety, and the efforts taken to provide this separation. In some jails, significant financial and operational resources are dedicated to housing juveniles separately.

Figure 3 provides a breakdown of the percentage of jails that use each housing approach for certified juveniles.

Of the 41 jails that responded to the survey, 30 jails are housing juveniles in single or separation cells. Of those 30, 22 jails house certified juveniles in single cells near adults, and 8 house them in single cells ex-

42. Survey.

Conditions for Certified Juveniles in Texas County Jails



clusively for certified juveniles. In these 30 jails that house juveniles in single cells, youth are physically separated from adults, but there is not typically strict sight and sound separation. Juveniles who are held in single cells exclusively for juveniles are more likely to be isolated by sight and sound in their cells, although they may have supervised contact with adults in other parts of the jail. In these jails, juveniles are being held in single cells in a pod or on a hall exclusively for certified juveniles. In some cases, jails use cells in the intake area or medical wing to provide this separation.

Of the 11 other jails that either always or sometimes house juveniles in cells with adults, all but two jails house only one juvenile at a time in the entire facility. For most of these jails, housing a certified juvenile is an infrequent occurrence. Of these 11 jails, there are two jails that always house certified juveniles in multi-occupancy cells with adults, and one jail that always houses them in a dormitory with adults. There are eight jails where housing may vary: juveniles are sometimes housed in single cells, and are sometimes housed in cells with adults. For these jails, housing depends on bed availability, the classification of the juvenile, or a determination by staff about the best housing option for the juvenile and the jail. One jail administrator described the many considerations that are weighed when certified juveniles are housed in that jail:

Some certified juveniles have been placed in general population after classification and a review of the charges and criminal history. Some are in administrative segregation due to factors [that] we feel

43. Survey.

Survey Findings

could place the individual in danger such as: no criminal history, the type of charge and the individual's mental and/or physical state. [It depends] on the type of charge, and also if it is a high profile case. Also, the criminal history of the subject or lack of is considered during classification and housing assignment.⁴³

The small number of jails that regularly have more than one certified juvenile at a time typically house these youth in single cells. Only two of the seven jails that often house more than one juvenile at a time responded that juveniles are sometimes housed in cells with adults. Also noteworthy is that of these seven jails that may house more than one juvenile at a time, only one jail indicated that it houses juveniles in a dormitory with other certified youth. During the follow-up interview, this jail's administrator noted that although certified juveniles are sometimes housed together in a dormitory together, the jail has had problems with fighting and has recently transitioned to housing certified youth in single cells.

The survey revealed that jails' approaches to housing certified juveniles vary across Texas, and housing determinations are not dependent on the average number of certified juveniles housed in the jail. The majority of jails consider certified juveniles to be youth, and house them in single cells based on this status. However, there are 11 jails that may house certified juveniles with adults.

D. Contact with Adults

Key Finding: Of the jails that responded to the survey, 11 commingle juveniles with adults, 12 allow minimal and supervised contact, and 18 allow no contact with adults. However, even in the jails that allow no formal contact, very few are enforcing sight and sound separation from adults.

Key Finding: Certified juveniles might come into contact with adults in the following areas: housing, showers, toilets, dining facilities, common areas, recreational activities, educational classes, other formal programming, the chapel, and the medical wing.

Although 73% of jails house juveniles in separation cells, less than half of all of the jails that were surveyed are making efforts to prevent any contact with adults in non-housing contexts. This means that many of the jails that are housing juveniles in separation cells are allowing some contact between juveniles and adult offenders in other parts of the jail.

Of the jails that allow some form of contact between certified juveniles and adults, jails described two distinct approaches: commingling, or supervised and minimal contact.

Commingling Juveniles With Adults

There are 11 jails that commingle certified juveniles with adults. As noted in the discussion of housing approaches, a small number of these jails always house certified juveniles in multi-occupancy cells with adults, but the majority make this determination on a case-by-case basis. However, although a juvenile is housed in a single cell this does not mean that he or she does not come into contact with adults. In jails that commingle, juveniles may be housed in single cells, but still interact with adults in all other areas of the jail as a member of the general population.

The majority of jails that commingle indicated that certified juveniles share hygiene facilities with adult offenders, however, the degree of privacy in the hygiene facilities varies. Most of the jails have toilets in the cells, meaning that a juvenile in a single cell will have access to his own toilet. However, a juvenile sharing a multi-occupancy cell with an adult or living in a dormitory with adults may share toilets without any privacy. In jails where juveniles are sharing showers with adults, showers are typically all in one room, but most of these showers are partitioned.

In jails where certified juveniles are commingled with adults, juveniles come into contact with adults in

Conditions for Certified Juveniles in Texas County Jails

common areas, during recreation, in chapel, in educational classes, and in other programs that are offered. The level of supervision during these times varies, but in jails that are commingling, juveniles are not receiving any special supervision beyond what is provided for the general population during these prolonged periods of contact with adults.

Minimal and Supervised Contact With Adults

The second approach taken by jails that allow contact between certified juveniles and adults is permitting only minimal and supervised contact. There are 12 jails that allow minimal and supervised contact with adults. In these jails, juveniles are not housed with adults, and do not share hygiene facilities with adults. However, juveniles in these jails may come into contact with adults in common areas, recreation, as well as any educational classes and other programming that is offered. During these periods of contact juveniles are typically receiving special supervision from jail officials, beyond what is provided for the general population.

No Contact With Adults

There are 18 jails that do not allow any formal contact between certified juveniles and adult offenders. However, very few if any of these jails are providing complete sight and sound separation from adults, a strict form of separation that prohibits clear visual contact or direct oral communication with adults.⁴⁴ In jails where certified juveniles do not come into contact with adults, juveniles are housed in single cells. They do not share hygiene facilities with adults, and do not attend any programming with adults. In many of these jails, staff make extraordinary efforts to prevent any contact between juveniles and adults. One jail administrator described the situation as follows: “Juveniles have no contact with adult inmates. All inmate traffic is shut down whenever a juvenile is transferred to recreation, court, medical, etc.”⁴⁵

Not all of these “no contact” jails shut down inmate traffic each time a juvenile is moved, however, a number of jails do use this practice. In jails that do not shut down all inmate traffic, certified juveniles receive personal supervision when they are moved. However, they may come into sight and sound contact with adult offenders during these moves throughout the facility.

The average number of juveniles a jail houses at one time may impact the approach that jail takes regarding contact with adults. Of the jails that house more than one juvenile at a time, only two allow contact with adults, and these jails both house juveniles in cells with adults.

E. Out-of-Cell Time

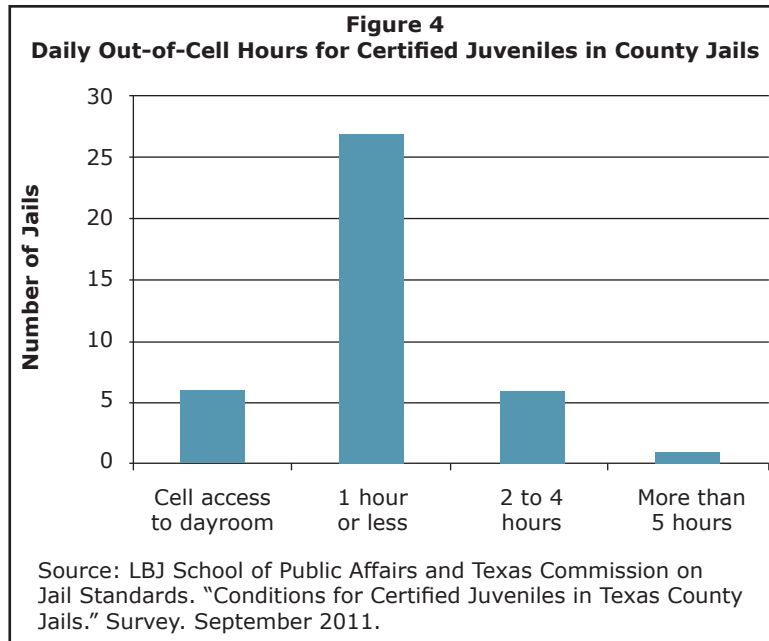
Key Finding: The majority of jails allow certified juveniles out of their cells for one hour or less per day.

In the jails that responded to the survey, 61% (25 jails) allow certified juveniles one hour or less of out-of-cell time per day. There are five jails that allow certified juveniles two to four hours of out-of-cell time per day, and there is only one jail that allows more than 5 hours of out-of-cell time per day.

44. In Texas, the definition of sight and sound separation is codified in the Texas Family Code §51.12(f). The definition of sight and sound separation in Texas law is more restrictive than what is prescribed by federal law through the JJDP. Specifically, the regulations for the JJDP state that: “Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential [...] would not require a facility or the State to document or report such contact as a violation.” 28 C.F.R. §31.303 (d) (1)(i). In contrast, the Texas statute specifies that “separation must extend to all areas of the facility”. Texas Family Code §51.12(f). Texas law also requires completely separate staff to manage the juveniles in the adult facility. Texas Family Code §51.12(1)(4).

45. Survey.

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The remaining jails reported that juveniles have access to a dayroom directly from their cells; however, during follow-up interviews many administrators indicated that actual time spent in the dayroom may be restricted to a small amount of time per day. In some jails, this restriction is because juveniles' cells are attached to a dayroom that is shared by adults, and juveniles are only allowed in the dayroom when adults are in their cells. Other jail officials noted that although juveniles' cells may be attached to a dayroom in a pod with other certified juveniles, staff only allows them out of their cells one at a time to minimize contact and potential for confrontation. In other jails, administrators cited that the jail standard for out-of-cell time is a minimum of three hours per week, and they do not exceed this standard.

Figure 4 above provides a breakdown of the number of out-of-cell hours jails reported providing for certified juveniles each day.

F. Educational Programming

Key Finding: Certified juveniles have very limited access to educational programming in county jails.

Of the jails that responded to the survey, only 54% have a formal education program, and in these jails the average number of hours of educational programming available for certified juveniles on a weekly basis is very limited. In the jails where some formal educational program is available, 13 provide less than five hours per week, five provide five to ten hours per week, and four provide 10 to 20 hours per week. Of the 46% of jails that do not provide formal educational programming, 15 jails allow certified juveniles to have books for use in their cells, in two jails education is only made available upon request, and in one jail no educational programming is available.

In the majority of the jails that are providing formal educational programming, the content of the program is not tailored for youth. Many of the educational programs are GED courses where juveniles are attending with adult inmates. In addition, many of the jails that provide books only offer GED study books. The jails where juveniles are joining adult inmates in GED courses are typically jails that only house one certified juvenile at a time, and are therefore limited in their ability to provide a tailored educational program for one individual.

Conditions for Certified Juveniles in Texas County Jails

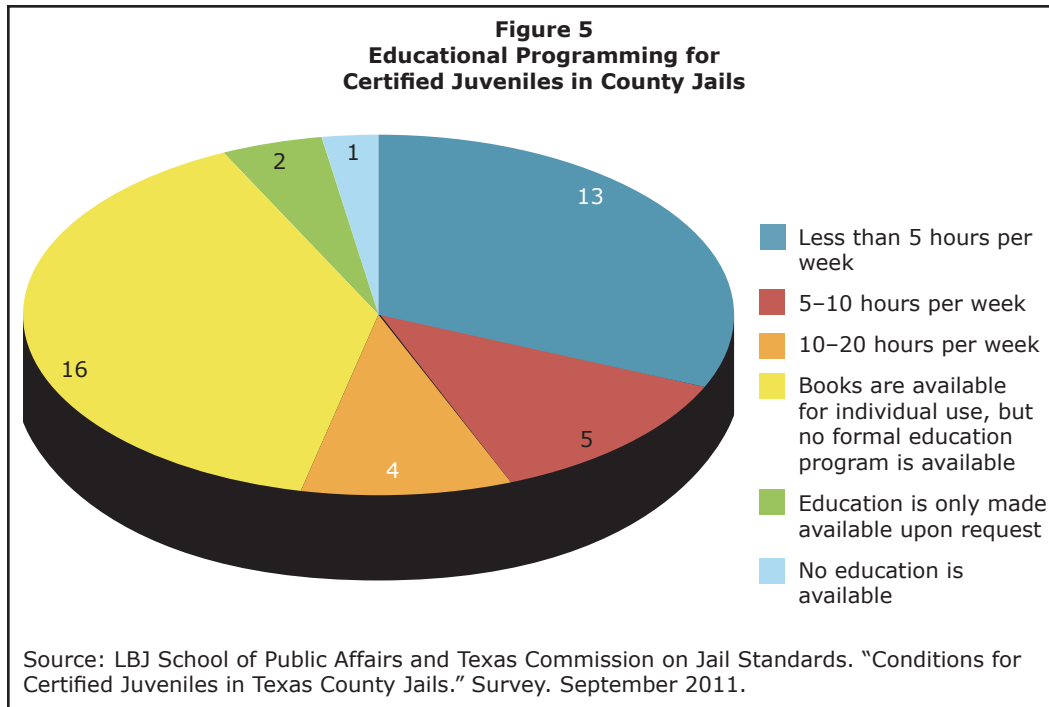


Figure 5 provides an overview of the amount of educational programming that is available for certified juveniles in county jails.

A very small number of jails provide certified juveniles with tailored educational programming based on their age and grade level, and in these cases the classes are frequently provided by the school district. The majority of the jails that have educational programming tailored for youth are housing more than one juvenile at a time. This allows the jail to set up a class that the juveniles can attend together. However, not all of the jails with more than one juvenile at a time provide tailored educational programming, and there are a small number of jails with only one juvenile at a time that have an arrangement with their school district to provide tailored educational programming. One jail administrator commented that: "[The juvenile's] school district determines their educational needs and delivers educational services to our facility through the school district's teachers. [The] content is based on the state of Texas requirements."⁴⁶

The majority of jails, however, are not able to provide tailored educational programming, and a number of jails described the obstacles that arose during previous attempts to arrange educational programs for certified juveniles. For example, one jail administrator explained:

The two inmates that we had in custody were charged with murder, and the school district was not comfortable with teachers being in contact with them. Non-contact interaction was not possible [because] the length of time requested would have eliminated visitation for other inmates.⁴⁷

As this jail official described, school districts may be reluctant to send teachers to the jails, and jails may also lack the physical space needed to provide a classroom for certified juveniles. A number of jails raised concerns about similar challenges to organizing classes through the school district. In these jails, schools may provide certified juveniles with books and other materials, but no formal class is offered.

46. Survey.

47. Ibid.

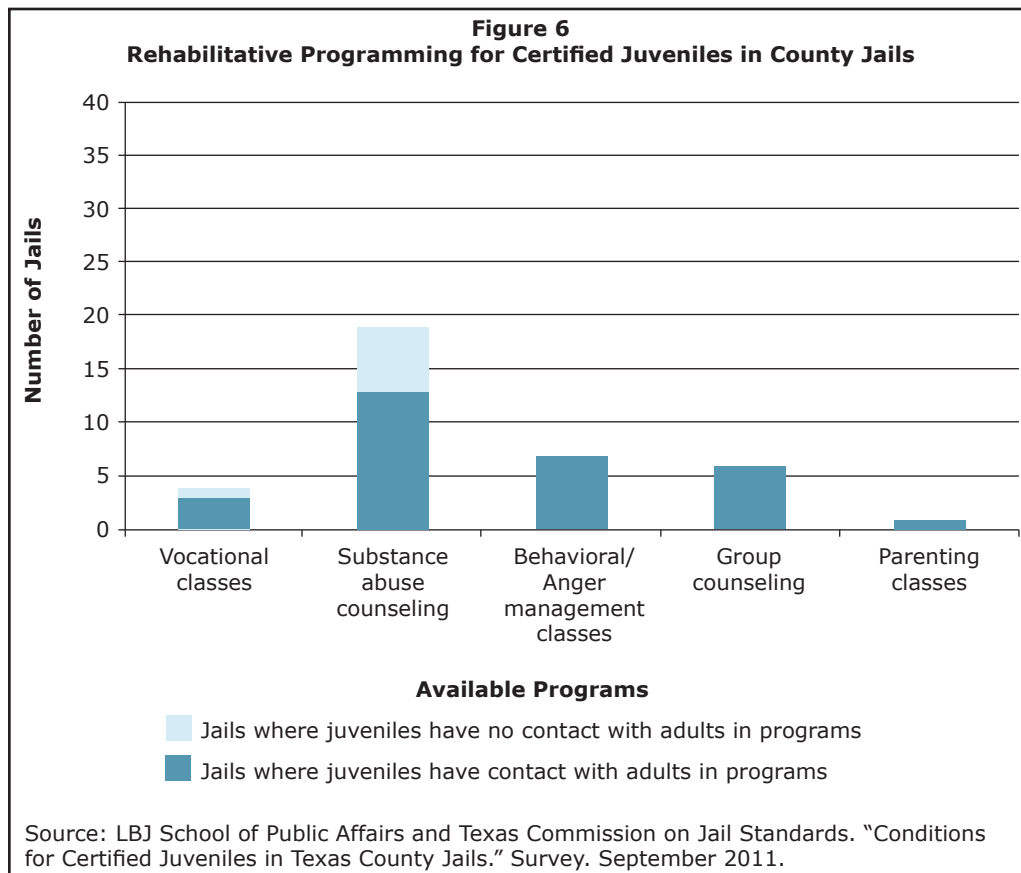
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G. Rehabilitative Programming

Key Finding: Certified juveniles in county jails have limited access to rehabilitative programming such as substance abuse treatment, counseling, behavioral counseling, and anger management. When certified youth have access to the limited programming available in jails, it is often alongside adult offenders.

Of the jails that responded to the survey, 51% provide certified juveniles with some very limited additional rehabilitative programming beyond educational classes. The jails that do provide rehabilitative programming may provide any combination of the following: substance abuse counseling, group counseling, behavioral or anger management classes, vocational classes and parenting classes. Figure 6 below provides an overview of the number of jails that provide each programming option.

Figure 6 shows that 46% of those jails responding to the survey provide substance abuse classes, 15% provide group counseling, 17% provide behavioral or anger management classes, 10% provide vocational classes, and 2% provide parenting classes. The jails with more certified juveniles do not provide more programming; instead the availability of programming for certified juveniles tends to be dependent on the programming available for the general adult offender population. In these jails, juveniles are more likely to be able to participate in programs if the jail allows some contact with adult offenders. There are some jails where juveniles are not able to participate in existing programs because the jail has decided to separate them from the adult population. However, there are also a small number of jails that make efforts to provide one-on-one programs for certified juveniles using their existing program staff and resources.



PART IV: DISCUSSION OF SURVEY FINDINGS

This section will discuss the implications of the survey findings, and identify ways that this report can inform future discussions related to the appropriate setting for pre-trial detention of certified juveniles in Texas. The survey responses indicate that regardless of the housing approach each jail takes, jails lack the capacity to provide for the needs of certified juveniles. From the problematic choice between isolating and commingling juveniles, with its attendant mental or physical health risks, to the lack of programming and inefficient use of resources, the survey results demonstrate that adult jails are not equipped to meet the needs of youth.

A. When making housing decisions, jails are forced to choose between protecting the mental health or physical safety of a juvenile.

Based on responses to this survey, the capacity of county jails to provide adequate housing conditions for certified juveniles is limited by a number of factors. Jails are forced to make a difficult choice when they house certified juveniles. The jail can emphasize physical safety and therefore house the juvenile separately from adult offenders. However, most jails only have one juvenile at a time, so this means they have no choice but to house the youth in isolation. In addition, jails that are housing more than one juvenile still tend to house the youth in isolation based on a concern that it would be difficult to manage numerous juveniles housed together. When jail staff decide to house a juvenile in isolation, although there is a great reduction in the risk of physical or sexual assault, the risk of mental health problems increases.

Risks to Certified Juveniles' Physical Safety

Despite the physical risks associated with commingling juveniles and adults that are recognized under the JJDPDA,⁴⁸ 11 of the jails surveyed commingle certified juveniles with adult offenders. As discussed earlier in this report, the national research on detention of juveniles indicates that juveniles confined in adult facilities face significantly higher risks of sexual assault and physical assault than their counterparts in juvenile facilities.⁴⁹

Given the great risk of physical violence against a youth, the choice by a jail to commingle juveniles with adults puts the youth's safety at risk. Many jails recognized these physical risks to youth in their survey responses, and manage this concern by minimizing contact between certified juveniles and adults. However, in the jails that commingle youth with adults, the safety of the juveniles is a significant concern.

Risks to Certified Juveniles' Mental Health

Given the broad range of physical risks to youth who are commingled with adult offenders, the majority of jails surveyed chose to house juveniles in isolation cells. Although these jails are making efforts to protect the physical safety of the juveniles in their custody, this isolation has its own risks.⁵⁰ It can have a detrimental impact on the juvenile's mental health, aggravating existing mental illness and augmenting suicidal ideation.⁵¹ Segregation may hurt adolescents' chance for proper socialization and damage their ability to

48. See 42 U.S.C.A. § 5633(a)(13)(A)(iii).

49. See discussion *supra* in Part II. C.

50. Stuart Grassian, "Psychiatric Effects of Solitary Confinement," 22 Wash. U. J. L. & Pol'y 325 (2006). Grassian found in his observation of numerous adult inmates held in isolation that "incarceration in solitary caused either severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness." p. 333

51. *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, *supra* n. 29, p. 14.

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develop a healthy adult identity.⁵² This reduction in socialization and impairment to identity formation may limit the possibility for future mental health recovery.⁵³

Even short periods of isolation can produce symptoms of paranoia, anxiety, and depression.⁵⁴ In fact, “even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium.”⁵⁵ The harm caused by isolation does not end at release; prolonged or permanent psychiatric disability may occur, including impairments that seriously reduce the inmate’s capacity to reintegrate into the broader community upon release from detention.⁵⁶ Amnesty International has condemned the practice of placing youths in isolation, finding that it both violates international law and is particularly damaging to “children and adolescents, who are not yet fully developed physically and emotionally and are less equipped to tolerate the effects of isolation.”⁵⁷

It is worth noting that certified youth in county jails have not been convicted of any crime, and are merely awaiting hearings or trials on their charges. They must be presumed innocent. Some of these youth will have their cases dismissed; some will be given probation; and others will be given time-served or short sentences.⁵⁸ Despite the speed with which these youth may re-enter the community, the effects of detention may be severe. For example, the impact of prolonged isolation may have mental health consequences that will make it difficult for these youth to reintegrate, and may increase the likelihood that they will recidivate.

As noted in Part II.C. of this report, national research indicates that juveniles held in adult jails have by far the highest suicide rate of any age group in adult jails.⁵⁹ Additionally, national data shows that juveniles in adult facilities are 36 times more likely to commit suicide than their counterparts in a juvenile detention facility.⁶⁰ The Centers for Disease Control and Prevention estimates that for every suicide committed by young adults (not specifically incarcerated youths) between the ages of 15 and 24, there were between 100- 200 attempts.⁶¹ This is significant, as the likelihood a youth will harm himself or herself in adult jail is exponentially increased from the already heightened suicide rates for juveniles in adult facilities. Given the

52. Matt Olson, *Kids in the Hole-Juvenile Offenders*. The Progressive 67(8), August 2003, cited in *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, *supra* n. 29, p. 14 .

53. *Ibid.*

54. Boyd, R., *Letter to Governor Parris Glendening from Assistant Attorney General Ralph F. Boyd Jr.*, Washington D.C., United States Department of Justice, August 2002.

55. Grassian, “Psychiatric Effects of Solitary Confinement,” *supra* n. 50, p. 331.

56. *Ibid.*, p. 354. Grassian goes on to detail some of the long-terms effects that relate to the ability to re-integrate: “These not only include persistent symptoms of post traumatic stress (such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness), but also lasting personality changes—especially including a continuing pattern of intolerance of social interaction, leaving the individual socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction.” *Ibid.* p. 353.

57. Amnesty International, *USA: Cruel Isolation*, April 2012, p. 13.

58. See Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, p. 20, Figure 11, indicating that in FY 1996, only 58% of certified juveniles end up with a prison sentence, while 27% receive community supervision and 11% have their cases dismissed or no-billed, or are found not guilty. Of those given prison sentences, the majority have sentences under 10 years. *Ibid.*, p. 23, Table 7. More recent data indicates that in fiscal year 2010, only 47% of certified youth served a prison sentence based on the offense for which they were certified, whereas the remaining 53% of certified youth were not sent to TDCJ. Texas Juvenile Justice Department, Report for House Corrections Committee, March 6, 2012, p. 10.

59. Mumola, “Suicide and Homicide in State Prisons and Local Jails,” *supra* n. 28, p. 5.

60. *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, *supra* n. 29, p. 10.

61. National Center for Injury Prevention and Control, Division of Violence Prevention, “Suicide,” (Atlanta, GA: US Department of Health and Human Services, CDC, 2010), available at: http://www.cdc.gov/ViolencePrevention/pdf/Suicide_DataSheet-a.pdf.

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significantly increased risk of suicide, self-harm, and aggravation of mental health issues, the choice to separate juveniles from adults only trades physical safety for mental health risks.

In housing certified juveniles, county jails across Texas are being asked to make a difficult decision between protecting a juvenile's physical safety and preserving his mental health. The survey findings demonstrate the diversity of approaches taken by different jails to reconcile these two competing concerns, as well as the good intentions of the jail administrators who are making these difficult choices. However, there is no good option for the jail administrators who are confronting this challenge. In contrast, juvenile detention centers do not have to make this choice between a youth's physical safety and mental health, because they have the capacity to house youth with other youth.

B. The lack of out-of-cell time for certified juveniles in county jails presents serious concerns for juveniles' mental and physical health.

An additional concern for certified juvenile's mental and physical health is the fact that 61% of the jails that responded to the survey allow certified juveniles only one hour or less of out-of-cell time per day. The effects of physical confinement in a small space combined with little to no social interaction aggravate the mental health risks discussed above, and can cause physical harm for youth whose bodies are still developing.

Many jails noted that juveniles are given out-of-cell recreation time separately from other inmates, which reinforces the finding that juveniles have limited contact with other people. As one jail administrator noted: "They are let out for an hour alone." Depending on the amenities available at the jail, this limited out-of-cell time may only occur indoors. In one urban jail that lacks an outdoor recreation yard, we encountered a 16-year old juvenile who was certified when he was 14 who told us: "I haven't seen sunlight in two years." The fact that a youth may remain in a cell for 23 hours a day and only be given one hour of out-of-cell time, potentially with no access to the fresh air or sunlight, may have grave consequences for a youth's mental stability and physical health.

The TJPC standards codified in the Texas Administrative Code mandate that juvenile pre-adjudication facilities provide certain recreation and exercise time; however, this mandate does not extend to county jails that hold juveniles.⁶² According to the Code, "The recreational schedule [at the juvenile pre-adjudication facility] shall offer the following programming: (1) Large Muscle Exercise. At least one hour of large muscle exercise shall be scheduled each day. (2) Open Recreational Activity. At least one hour of open recreational activity shall be scheduled each day."⁶³ The only exceptions to this mandate for juvenile detention centers appear to be if a juvenile has a medical condition, or if the juvenile is in disciplinary seclusion. This is a significant amount of mandated recreation in juvenile facilities compared to what the surveyed jails indicated is available for certified juveniles in county jails.

C. The lack of educational classes and other rehabilitative programming available to certified juveniles impairs their ability to reintegrate after they are released.

The survey results indicate that certified juveniles have very limited access to educational classes and other rehabilitative programming. Where programming exists, it is often only available to juveniles if the jail allows contact with adults because jails that are strict in their separation of juveniles and adults are often unable to provide programming exclusively for juveniles. Given the extended length of time that many juveniles are held in these facilities, the lack of educational programming makes it very difficult for a juvenile to re-enter

62. Texas Administrative Code §343.498.

63. Ibid.

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school at grade level upon release. In contrast, all juvenile detention facilities provide educational programming in accordance with the guidelines mandated by the TJPC standards in the Texas Administrative Code, and most juvenile facilities also offer other programming to address the youths' special needs.⁶⁴

Effects of Limited Educational Programming

Adult county jails are not able to provide certified juveniles with adequate educational programming. 48% of the jails that responded to the survey have no formal education program, and jails that do have some formal education program are often providing GED classes to a mix of adults and juveniles. Although GED classes are better than no educational programming, they do not ensure that a juvenile will not fall behind in school.

This lack of educational programming can be a significant setback for a youth's educational achievement, particularly for the large number of youth who are detained from six months to longer than one year. The lapse in educational programming resulting from time spent in an adult jail may make it difficult for youth to reintegrate into their schools when they are released, and data suggests that many certified youth will be released either immediately after trial or after relatively short periods of incarceration. Although disposition outcomes for certified youth are not tracked, the available information indicates that the majority of certified youth in Texas will not be sentenced to serve time in prison. The most recent available analysis of outcomes for certified youth in Texas indicates that only 47% of certified youth ultimately received prison sentences, with the remainder either being placed on community supervision, sentenced to two years or less in state or county jail, or being found not guilty or having their cases dismissed or no-billed.⁶⁵ In addition, a national study of 40 jurisdictions in 19 states found that as many as half of youth prosecuted in the adult system do not receive an adult court conviction, and fewer than 25% of convictions for youth in adult court result in a prison sentence.⁶⁶

Even those youth who are sentenced to serve time in prison may serve relatively short sentences. Although the length of sentences for certified youth is not tracked, the 2011 report on *Juveniles in the Adult Criminal Justice System in Texas* provides a snapshot of sentence length for certified youth in Texas who are sentenced to prison. This snapshot suggests that 59% of these offenders are serving terms of 10 years or less, with 6% serving terms of 3 years or less.⁶⁷ These figures suggest that in addition to the significant number of certified youth who will not serve prison time, a substantial number of youth who do serve prison time will receive relatively short sentences. This indicates that many certified youth will return to their communities while they are still quite young (in their teens and twenties).

However, if the youth are detained in adult facilities without educational programming, they are likely to fall behind in school, and as a result will not be able to return to their school at grade level after their release. The difficulty youth face reintegrating into their home schools and the setbacks in academic achievement have real implications for the youth's future employment, as well as his or her likelihood of recidivism. A study in the *American Economic Review*, indicates that each one-year increase in average years of schooling decreases the likelihood an individual will commit a violent crime by almost 30%.⁶⁸ It has also been found that the disruptions in education resulting from incarceration have long-term effects on youth's outcomes,

64. Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011) available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>, and Texas Administrative Code §343.488-496

65. Texas Juvenile Justice Department, Report for House Corrections Committee, March 6, 2012, p. 10.

66. Jolanta Juskiewicz, "To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution," study conducted on behalf of Campaign for Youth Justice, results published in *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, p. 17.

67. Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, p. 23.

68. Lochner, Lance, and Enrico Moretti. 2004. "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports." *American Economic Review*, 94(1): 155-189, cited in *Jailing Juveniles*, *supra* n. 29, p.7.

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and specifically increase dropout rates.⁶⁹ Educational disruptions are also key predictors for future involvement in the juvenile justice system.⁷⁰

Effects of Limited Rehabilitative Programming

The survey results indicated that certified juveniles have little to no access to rehabilitative programming such as substance abuse treatment, counseling, and behavioral therapy while they are in the adult county jails. Where such programming does exist, it is often only available to juveniles if the jail allows contact with adults. Jails that are strict in their separation of juveniles and adults are often unable to provide programming exclusively for juveniles due to the small number of juveniles in the facility.

Of the 41 jails surveyed, only 19 provide substance abuse programming, 7 provide behavioral programs or anger management, and 6 provide group counseling. Where programming is available in the jails, it is not typically tailored to youth. On occasion, a specialist may provide youth with one-on-one counseling, but this was reported to occur rarely, and only on an informal basis.

Like the lack of educational programming, this lack of specialized mental health and behavioral programming may be detrimental to a juvenile's ability to reintegrate after he or she is released. As noted above, many youth are likely to return to their community either immediately after trial or after a short prison or jail sentence. Thus, this lack of programming, and in particular, the lack of mental health services, can have a serious impact on a juvenile's ability to successfully re-integrate into the community. It may also have a significant impact on public safety.

In contrast to the very limited programs available in the adult jail facilities, the majority of juvenile pre-adjudication facilities offer programming tailored for youth. All but two facilities provide mental health services for youth, including mental health assessments and formal treatment programs.⁷¹ In addition, 84% of the detention facilities offer substance abuse counseling, 86% provide individual or group counseling, and 38% have cognitive behavioral therapy.⁷²

The availability of programming and mental health treatment in juvenile detention is a result of extensive regulations in the Texas Administrative Code dictating minimum requirements of service provisions for youth in juvenile pre-adjudication facilities.⁷³ The Code mandates that juvenile pre-adjudication facilities include behavioral health care services for sexual abuse victims, suicide prevention plans, mental health referrals for high risk suicidal youth, and supervision of high and moderate risk suicidal youth.⁷⁴ Again, these provisions only apply to juvenile pre-adjudication detention facilities.

69. James H. Keeley, "Will Adjudicated Youth Return to School After Residential Placement? The Results of a Predictive Variable Study," 57 *J. Correctional Educ.* (2006), pp. 65, 67. Keeley discusses a 1986 study by Haberman and Quinn, which found that "after release, only 1.6% [of youths released from a residential placement] earned their high school diploma and 10.5% earned a GED." p. 67.

70. Tony Fabelo, et. al., *Breaking Schools Rules*, Council of State Governments Justice Center (July 2011), p. 61.

71. Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011) available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

72. *Ibid.*

73. Texas Administrative Code §343.

74. Texas Administrative Code §§ 343.332, 343.340, 343.346, 343.348, 343.350.

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D. The lack of education classes for certified juveniles in county jails appears to be in violation of state and federal laws.

In addition to the harmful impact on a juvenile's ability to re-integrate, the lack of educational programming appears to violate the law. The Texas Education Code compels all youth between the ages of 6 and 18 to attend school;⁷⁵ however, the survey results indicate that most youth in detention have little to no access to educational programming. The limited exceptions to compulsory education in the Texas Education Code do not indicate that incarcerated youth are exempt from these requirements.⁷⁶

In addition, the Individuals with Disabilities Education Act, a federal law, requires that jails provide youths who have special education needs with tailored educational services.⁷⁷ A national study indicates that 33.4% of youth incarcerated in juvenile centers require special education classes;⁷⁸ however, the survey indicates that the jails in Texas are not meeting this federal mandate. The federal No Child Left Behind Act (NCLBA) also includes provisions on educational monitoring and teacher qualification for all students⁷⁹, and has funding allocations for at-risk youth including youth incarcerated in adult corrections.⁸⁰ Finally, Article 7, Section 1 of the Texas Constitution mandates education for all Texas youth.⁸¹ Given that the majority of adult jails are not providing educational services to certified juveniles, this apparent non-compliance with the law could make jails vulnerable to litigation.

In comparison to the lack of educational programming available to youth in county jails, all of the 50 juvenile pre-adjudication facilities in Texas provide educational programming.⁸² In all but one of these juvenile facilities, certified teachers are teaching the classes.⁸³ In addition, juveniles detained in all but one facility can receive credit toward graduation for completed classes when they return to their regular school.⁸⁴ In all but two of the pre-adjudication juvenile detention centers, youth have access to special education services.⁸⁵

The Texas Administrative Code mandates minimum educational requirements for juvenile in pre-adjudication facilities. Specifically, the Code states: "The facility administrator shall ensure that there is an educational program that requires all residents to participate. The educational program provided shall be administered in accordance with rules adopted by the Texas Education Agency (TEA)."⁸⁶ In addition, the

75. Texas Education Code § 25.085.

76. See Texas Education Code § 25.086.

77. Individuals with Disabilities Education Act, 20 U.S.C. §1400.

78. Mary Quinn and Robert Rutherford, "Youth with Disabilities in Juvenile Corrections," *Exceptional Children*, Vol. 71 No. 3, 339-345, Council for Exceptional Children, 2005. p. 342. Available at http://www.arturohernandez.org/disability-best_corrections_survey.pdf.

79. See generally 20 U.S.C.A §6301.

80. See 20 U.S.C.A. § 6455.

81. See *Edgewood v. Kirby*, 777 S.W.2d 391, 396 (TX 1989). ("Although local conditions vary, the constitutionally imposed state responsibility for an efficient education system is the same for all citizens regardless of where they live."). For further discussion of the legal right to education for incarcerated youth, see Katherine Twomey, "The Right to Education in Juvenile Detention under State Constitutions," 94 Va. L. Rev. 765, (May 2008).

82. Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011), available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

83. Ibid.

84. Ibid.

85. Ibid.

86. Texas Administrative Code §343.488.

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Code mandates that the curriculum follow the Texas Essential Knowledge and Skills.⁸⁷ Finally, the Code contains specific provisions requiring that juvenile facilities meet the educational needs of individuals with disabilities.⁸⁸ However, these requirements are statutorily limited to the juvenile pre-adjudication context. As a result, juveniles in county jails are not receiving educational programming that meets the standards for other detained youth as outlined in the Texas Administrative Code.

E. Detaining juveniles in adult county jails strains the jails' limited resources and is an unwanted financial and operational burden for jail officials.

Jails that recognize the safety risks and special needs of certified juveniles incur additional costs associated with housing youth separately, and providing youth with special supervision and programming. These additional costs are necessary to ensure the safety of the youth, however, they make the average cost of housing certified juveniles in a jail higher than the average cost of housing an adult in the same facility. Particularly in jails that choose to house certified juveniles separately from adults, the operational and financial burden of housing certified youth is significant. The architecture of many of the surveyed jails does not accommodate keeping separate populations of juveniles and adult offenders. As a result, jails may shut down an entire section of the jail to house a single juvenile, and this can result in the waste of bed space.

For example, in one large county jail, a pod with 26 separation cells was being used to house four certified juveniles at the time of our visit in October 2011. This jail is unable to use the 22 other cells in the pod for adult inmates because the jail reserves the pod exclusively for certified juveniles to provide them with separation from adult offenders. However, the jail was also over-capacity during this time, and was simultaneously sending adult inmates to other counties because there were not enough available beds. The daily cost for a bed in this jail is \$45, so given that the jail was above capacity, this approach to housing certified juveniles was costing the jail an additional \$990 per day, or \$361,350 annually in un-utilized bed space.⁸⁹ The average cost for a contract placement in this county's juvenile facility is \$231 per day, suggesting that the jail could have saved \$66 per day by transferring these four youth to the juvenile detention center. This would have resulted in an annual cost savings of nearly \$24,090 for this jail.⁹⁰

Although most jails do not experience this degree of lost bed space when housing certified youth, the jails that are making efforts to separate youth do all dedicate some separate staff to the supervision of these youth. For those jails that strive to minimize contact between juveniles and adults, moving the certified juveniles throughout the facility can be a strain on staffing resources. For example, one jail administrator noted: "A juvenile is always escorted by a guard after the floor is cleared of any adult inmates." Additional staffing resources are required any time that the facility needs to get adult offenders out of the hallways, and provide individual escorts for the juveniles. Many jails also reported providing youth with independent recreation time, suggesting that youth are being provided with one-on-one staff supervision during recreation. Given that the majority of jails house no more than one youth at a given time, it is likely that staff supervision during transfers and recreation result in a higher average cost associated with housing a youth in the jail, when compared to the average cost of housing an adult.

It should be noted that not all jails are taking such steps to separate juveniles and adults. But given the possibility of harm that can come from commingling youths and adults, the jails that commingle may also incur additional expenses from litigation costs if a problem does arise. Jails that keep juveniles in isolation may also

87. Texas Administrative Code §343.489.

88. Texas Administrative Code §343.491.

89. "Facts About the Harris County Sheriff's Office," Harris County Sheriff's Office, Accessed on April 9, 2012 from <http://www.hcso.hctx.net/documents/PressKits/HCSO%20Fact%20Sheet.pdf>.

90. Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011), available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

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incur litigation costs if the youth were to harm themselves due to mental health issues aggravated by the lack of programming and isolation. The facilities may also be liable for not providing mandated education to the juveniles in their care.

In both the surveys and the follow-up interviews, jail officials noted that housing juveniles was a strain on the jail, and some noted that they wish these juveniles could be housed in settings more appropriate for them. One jail official commented, “I don’t think children should be in adult jail. Adult jails are not equipped to handle children. Even those who have committed serious crimes, like capital murder, should be housed in juvenile facilities.”⁹¹ Similarly, a longtime Texas prison warden told us that these youth should not be housed in adult facilities either pre-trial or post-conviction, noting that “the idea was wrong from its infancy.”⁹²

F. The challenges jails face related to housing certified juveniles are aggravated when jails house female certified juveniles.

The vast majority of certified youth in Texas county jails are male, however, jails occasionally house certified females. In the 2005-2009 period, 4.7% of certifications in Texas were for female offenders.⁹³ In the post-survey interviews, few jail administrators noted that they had experience housing certified females; however, jail officials did comment on the additional challenges that would be associated with housing a female youth. One jail indicated that if a certified female were to be confined in the jail, she would be placed in a pod exclusively for certified females, presumably alone in this entire pod. This would result in the jail sacrificing additional all the empty beds in that pod to provide separation for the certified female, at significant cost to the jail. While housing certified females generates many of the same tensions as housing certified males, in some sense it is even more difficult for jails to accommodate certified females because of the extremely small numbers of female juveniles who are certified. Given the small numbers, it is more likely that certified females might be either commingled with adult offenders or held in strict isolation, limiting their access to any programming or human contact.

G. The lack of guidance and standards related to the appropriate management of certified juveniles puts juveniles and jails at risk.

The survey results clearly demonstrate that a lack of standards for how certified juveniles should be managed in county jails has resulted in an *ad hoc* approach to housing and working with certified juveniles at the county level. As a result, most jails handle juveniles without any information on best practices or guidelines for housing youth in adult facilities. As one jail administrator indicated, “When researching the proper way to house them, there was conflicting information.”⁹⁴ None of the county jails that responded to the survey provided a detailed operational policy related to the housing of certified juveniles, and multiple county jails described making decisions about these youth on a case-by-case basis. Despite many jail officials’ good intentions, jails are often uninformed about the implications of their decisions for the juveniles in their custody. This unstructured and uninformed approach can put the juvenile at risk and leave the jail vulnerable to lawsuits.

91. Survey.

92. Interview with Todd Harris, Warden, Clemens Unit, Texas Department of Criminal Justice, April 5, 2012 (the Youthful Offender Program for certified juveniles is located at the Clemens Unit).

93. Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, p. 11.

94. Survey.

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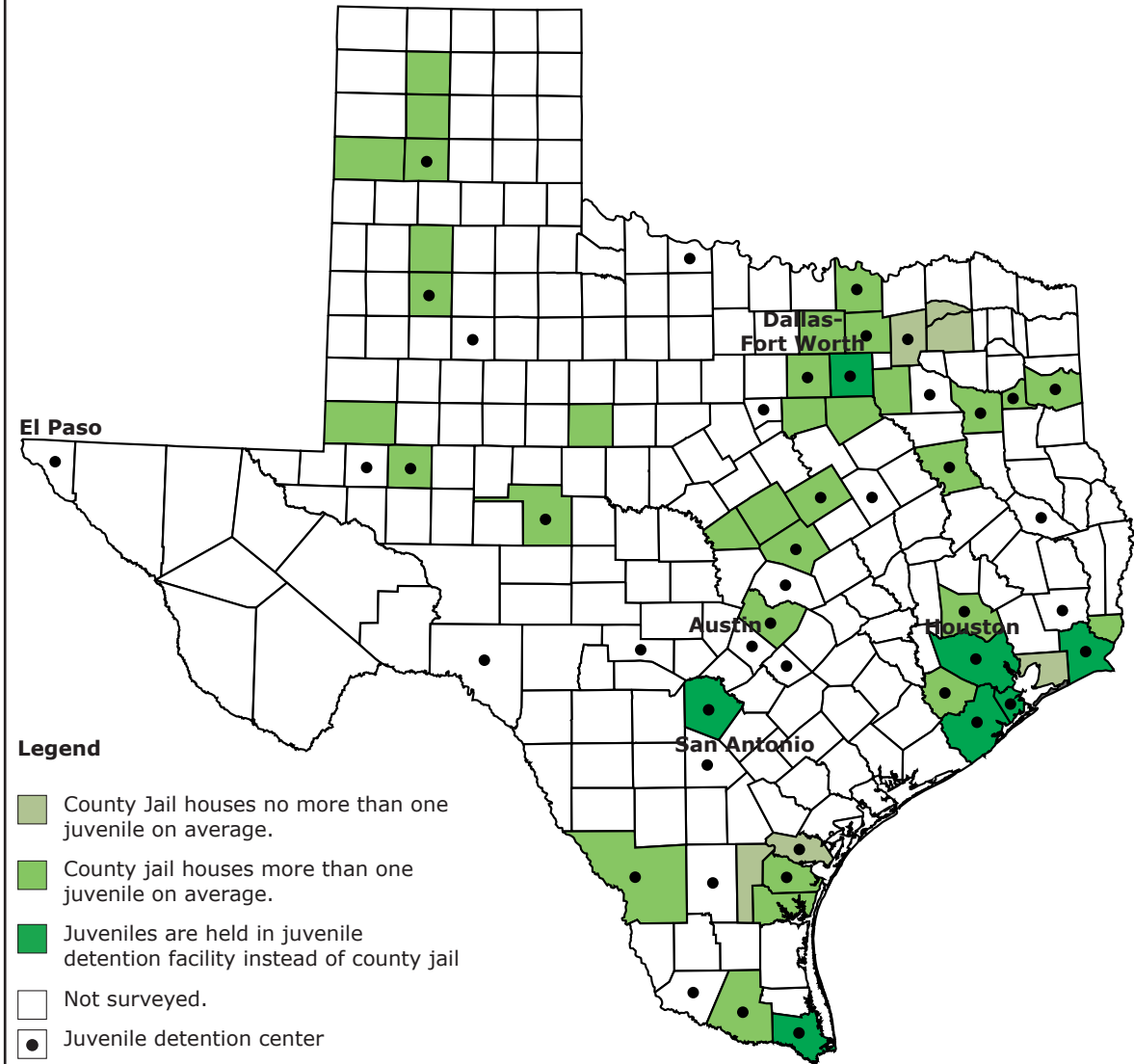
H. The majority of counties that have historically certified juveniles have juvenile detention facilities in their county, where youth could be housed if the county's juvenile board establishes a policy allowing this practice.

Although there are a few counties that do not have juvenile detention centers, the majority of counties that have historically certified juveniles do have a juvenile detention facility in the county. In addition, all of the jails that reported regularly housing more than one certified youth have a juvenile detention center in the county. Based on this information, it would be rare that a county would have more than one youth at any given time for whom it would need to make special arrangements with a nearby county for housing in a juvenile detention facility.

The map below indicates the location of juvenile detention centers in relation to the counties surveyed and demonstrates the proximity of juvenile detention centers to all counties. Of the counties that responded to the survey, there are 17 that do not have a juvenile facility, and that therefore may need to develop an arrangement with another county to house their certified juveniles. Figure 7 below identifies the surveyed counties, and the locations of all juvenile detention facilities throughout the state.

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Figure 7
Counties with Certified Juveniles and Locations of Juvenile Detention Facilities



Source: LBJ School of Public Affairs and Texas Commission on Jail Standards. "Conditions for Certified Juveniles in Texas County Jails." Survey. September 2011; and Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011), available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

PART V: RECOMMENDATIONS

This section provides recommendations for state and local policymakers, juvenile boards, and agency officials, based on the survey findings and analysis of those findings.

(1) Certified juveniles should be confined in juvenile detention centers rather than in adult jails while awaiting trial, so they can be housed with age-appropriate peers, participate in educational classes, and receive necessary services.

The findings of the survey demonstrate that county jails are confronting significant challenges related to housing certified juveniles and that the needs of certified juveniles would be better met in a juvenile detention center. County jails face an impossible choice between ensuring certified juveniles' physical safety and minimizing the mental health risks that may arise from prolonged isolation. In addition, county jails have limited resources to provide educational and other programming, and what limited programming is available is rarely tailored to youth. Jails are also incurring extra costs to safely accommodate juveniles, and are wasting bed space although many jails are at or over capacity.

SB 1209 has provided juvenile boards with a mechanism for addressing the challenges related to housing certified juveniles in county jails. The findings from this survey should help inform juvenile boards as they examine their policies for housing certified juveniles. The survey findings demonstrate that county jails are not equipped to meet the needs of certified juveniles, and suggest that juvenile boards should adopt a policy permitting judges to house these youth in juvenile detention facilities.

Juvenile boards may be resistant to adopting such a policy because the costs of detention in a juvenile facility are significantly higher than in an adult facility. In addition, some counties may not have a juvenile facility in their county, and will need to consider the possibility of developing an arrangement with a neighboring county if the policy is adopted. Finally, some juvenile boards may believe that certified juveniles are too dangerous to be held in juvenile detention centers. While these concerns need to be recognized and addressed, they should not be dispositive of the issue for the reasons discussed below.

Although the per diem cost of housing an individual in a juvenile detention center is greater than the per diem cost of housing an individual in a county jail, the cost of housing a juvenile in a county jail cannot be assumed to be the same as the cost of housing an adult in a county jail. First, it is likely that county jails are realizing extra costs associated with housing certified juveniles due to the extra staffing resources required to separately supervise and move juveniles. In addition, there are some county jails that are providing one-on-one programming for certified juveniles, which may also generate staffing costs above those associated with a typical adult inmate. There are also a small number of jails where housing of certified juveniles separately monopolizes more than one bed, resulting in additional costs because these beds cannot be used for adults. This is the case in a number of jails that utilize the medical wing or intake cells to separate certified juveniles, and in one urban county that is losing 22 beds each day to house 4 certified juveniles in a separate pod away from adult offenders. In 2011, that urban jail was at capacity for adult offenders and was renting bed space from other counties. During this time the jail could have saved \$66 per day by transferring these four youth to the juvenile detention center, which would have resulted in an annual cost savings of nearly \$24,090 for the jail.⁹⁵

In addition, based on the survey findings, the number of certified juveniles that would need to be housed in juvenile detention facilities is much lower than juvenile boards may be anticipating. No county currently has

95. "Facts About the Harris County Sheriff's Office," Harris County Sheriff's Office, Accessed on April 9, 2012 from <http://www.hcso.hctx.net/documents/PressKits/HCSO%20Fact%20Sheet.pdf>; and Texas Juvenile Justice Department, Juvenile Facility Registry (CY 2011), available at <https://www.tjjd.texas.gov/programregistryexternal/members/searchprograms.aspx>.

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more than eight certified juveniles in the jail, and the majority of counties have none. Of those counties that currently have any certified juveniles, half currently have only one youth in the jail.⁹⁶ These certified youth would take up very little bed space in the juvenile detention centers and would not pose a significant burden on these facilities. Given that the majority of counties that have historically certified youth have juvenile detention centers in their own county, the transportation costs associated with housing youth in another county would only impact a small number of counties.

When assessing the relative costs of housing certified youth in adult jails versus juvenile detention centers, county officials and juvenile boards may also want to consider the potential for litigation stemming from confining youth in adult jails. The risks these youth face—both physical and mental—may lead to either injuries or suicide, either of which could be a source of liability for the county. Moreover, the county could face litigation over possible violations of state and federal law due to the lack of educational opportunities in the adult jails.

Finally, certified juveniles and at least some youth held in juvenile detention centers are charged with crimes of comparable severity, and there is no reason that any given certified youth would pose a different security risk than juveniles already housed in juvenile detention facilities.⁹⁷ Juvenile detention centers are already holding serious offenders, including youth charged with determinate sentence offenses such as murder, sexual assault, and aggravated robbery, and are equipped to accommodate youth who are charged with serious crimes.⁹⁸ As noted in the report *Juveniles in the Adult Criminal Justice System in Texas*: “certified youth who are tried as adults as a whole are not demonstrably more violent than the population of serious juvenile offenders who are retained by the juvenile court and given determinate sentences with placement in TYC.”⁹⁹

In addition, if juvenile boards adopt a policy allowing judges to transfer certified juveniles to juvenile detention centers, judges maintain the discretion to house certified juveniles in the county jail if they feel that a specific youth poses a security threat.¹⁰⁰ Given that certified juveniles are not inherently different from juveniles in detention based on the crimes that they are charged with, and given the level of discretion available to judges, there is no safety reason for juvenile boards to disallow under all circumstances the transfer of certified juveniles to juvenile detention centers. Indeed, numerous states—including California, Colorado, Kentucky, Pennsylvania, and Virginia—require certified juveniles to be held in juvenile detention facilities pre-trial, or at least establish this as a presumption in all but the most exceptional circumstances.¹⁰¹

The survey findings demonstrate that, across the board in Texas, county jails are not equipped to meet the needs of certified juveniles, and suggest that juvenile boards should adopt a policy permitting judges to order these youth confined in juvenile detention facilities. Should juvenile boards not adopt such policies or should judges continue to send these youth to adult jails, policy makers may wish to consider amending the law to require confinement of certified youth in juvenile facilities in all but the most unusual circumstances.

96. Survey.

97. The range of offenses for which a juvenile can be certified and sent to the adult court is extremely broad. Certifiable offenses include: capital felonies, first degree felonies, aggravated controlled substance felonies, second degree felonies, third degree felonies, and state jail felonies. Often there is a misconception that most youth who are certified have committed homicide, when in fact youth charged with homicide offenses only make up 17% of certifications. Additionally, it is important to note that some of the offenses these youth are being certified for are property crimes and not crimes to persons, similarly dispelling the notion that these youths are the most violent of young offenders. Approximately 10 – 15% of certifications are for non-violent offenses. Deitch, *Juveniles in the Adult Criminal Justice System in Texas*, pp. 13-14.

98. Ibid, p. 14.

99. Ibid, p. 14.

100. Texas Human Resources Code, Section 152.0007, as modified by SB 1209.

101. Cal. Welf. & Inst. Code §207.1(b) (2010), Co Statutes §19-2-508 (2012), Ky. Rev. Stat. §640.020 (1988), Pa. Cons. Stat. §6327(c.1) (2010) and Va. Code Ann. §16.1-249(D) (2010).

Recommendations

(2) The Texas Commission on Jail Standards should consider developing guidelines for jails on the appropriate approach for managing certified juveniles.

Although the needs of juveniles can be better met in a juvenile detention center, it is likely that a number of county jails will continue to house at least some certified juveniles. In some counties it may take time for juvenile boards to establish a policy in response to SB1209, and in some counties the juvenile boards may choose not to allow the practice of transferring juveniles to juvenile detention facilities. Moreover, judges may in some instances require a certified youth to be held in the adult jail, despite the existence of a general policy allowing certified juveniles to be held in the local juvenile detention center. As a result, jails in some counties in Texas may continue to house juveniles absent a change in the law requiring certified youth to be confined in juvenile facilities.

Given the inconsistency in housing policies across the state, and the significant physical safety and mental health risks for juveniles who are housed in adult jails, the Texas Commission on Jail Standards (TCJS) should consider developing guidelines for jails on the appropriate approach for managing the special population of certified juveniles. These standards should require separate housing arrangements for certified juveniles, at least until age 17. Juveniles and adult offenders should not be allowed to share cells or to be housed in the same dorm, given the risks to the physical safety of the juveniles, including a high risk of sexual assault. Although the majority of jails are already adhering to this preferred approach of separate housing, there are a number of jails that treat juveniles as adults and that are housing them with adults based on their classification status.

Although this report recommends that jails separate certified juveniles from adults in housing, the guidelines should not require jails to adhere to strict sight and sound separation as it is defined in Texas Family Code § 51.12.¹⁰² The architecture of most jails in Texas renders sight and sound separation impossible absent costly renovations and enhanced staffing. In jails where it is possible, sight and sound separation may result in extreme isolation for juveniles, as the majority of jails typically house no more than one youth at a time. Such extreme isolation is a practice that could have severe repercussions for the youth's mental health. Strict sight and sound separation may also decrease certified youths' already limited access to educational and other programming, as the majority of youth who are in these programs are attending programs with adults. The majority of jails do not have the capacity to provide separate programming for juveniles, so strict sight and sound separation would mean that youth would have no access to classes or to programming.

Guidelines promulgated by TCJS should also provide jails with direction on the physical, dietary, and educational needs of youth incarcerated in the jails. TCJS should provide guidance on appropriate minimums for out-of-cell and recreation time to allow for large muscle activities to meet the needs of adolescent youth. In addition, the guidelines should address requirements for jails to meet the specific dietary needs of an adolescent. Finally, it should be made clear to jails that they are legally required to provide juveniles with educational programming, regardless of the expense or logistical complications involved. Failure to provide adequate educational programming puts the jails at risk for litigation, and thus this issue should be included in any guidelines developed by TCJS.

102. The Attorney General of Texas has been asked for an opinion about how new language added to Texas Family Code §51.12 through SB 1209 affects the need for county jails to provide certified juveniles with sight and sound separation. An opinion is expected prior to May 1, 2012. The recommendations in this report are based on the survey findings and research about best practices, but could be affected by the legal interpretation provided by the Attorney General.

Appendix A:

SURVEY INSTRUMENT

SURVEY ABOUT CERTIFIED JUVENILES IN COUNTY JAILS

County: _____ Date: _____

Survey Completed By:

Name: _____ Phone: _____

Title: _____ Email: _____

1. How many certified juveniles are in your county jail as of today's date?

2. What is the average length of stay for certified juveniles who have been housed in your jail in the past? *(Please circle your answer)*

- a) 1 week or less
- b) 2 weeks to 3 months
- c) 3 months to 6 months
- d) 6 months to 1 year
- e) More than 1 year
- f) Not sure

Comments:

3. Does your jail have any policies or procedures regarding the management of certified juveniles?

Yes **(If yes, please attach a copy of any relevant policy or procedure when you return this survey).**

No

Conditions for Certified Juveniles in Texas County Jails

4. Please circle the option(s) that best reflects how certified juveniles are housed in your jail:
- a) They are housed with other certified juveniles in a dormitory that is exclusively for certified juveniles.
 - b) They are housed in single cells or separation cells that are exclusively for certified juveniles.
 - c) They are housed in multiple occupancy cells with other certified juveniles that are exclusively for certified juveniles.
 - d) They are housed in single cells or separation cells with adults.
 - e) They are housed in multiple occupancy cells with adults.
 - f) They are housed in a dormitory with adults.

Comments: _____

5. If certified juveniles are housed in cells that do not include day room space, please circle the option that best reflects the number of hours of out-of-cell time certified juveniles are given **each day**:
- a) 1 hour or less
 - b) 2 to 4 hours
 - c) 5 to 8 hours
 - d) More than 8 hours
 - e) Not applicable

6. Please check those programmatic activities that a certified juvenile will have access to during out-of-cell time:

____ Dayroom
____ Indoor gym
____ Outdoor recreation yard
____ Educational classes
____ Vocational classes
____ Substance abuse counseling
____ Chapel
____ Other programs (please describe):

Appendix A: Survey Instrument

7. Please check any of the following areas where certified juveniles might come into contact with adult offenders:

- Toilets
- Showers
- Dining areas
- Dayrooms
- Indoor gym
- Outdoor recreation yard
- Medical
- Pill distribution line

Comments

8. Do certified juveniles attend classes or programs of any kind with adult offenders?

- Yes
- No

If yes, please check the types of programs where certified juveniles may come into contact with adult offenders:

- Educational classes
- Vocational classes
- Group counseling
- Substance abuse classes
- Anger-management classes
- Other (please describe) _____

Comments:

Conditions for Certified Juveniles in Texas County Jails

9. Please circle the option that best reflects the amount of time certified juveniles spend in educational programming **per week**:

- a) Less than 5 hours
- b) 5-10 hours
- c) 10-20 hours
- d) More than 20 hours
- e) Books are available for individual use, but no formal educational program is available.
- f) No books or formal educational program are available.

Please provide any additional information about the content and format of educational programs provided to certified juveniles:

10. Do certified juveniles in your jail have access to any special services or programs designed to meet their needs?

- Yes
 No

If yes, please describe those special services or programs:

Please use the space below to provide any additional comments you have about how you have worked with certified juveniles in your jail in the past.

Appendix A:

COUNTY JAILS SURVEYED

Anderson
Andrews
Bell
Bexar
Brazoria
Caldwell
Cameron
Chambers
Collin
Coryell
Dallas
Deaf Smith
Delta
Denton
Ellis
Fort Bend
Galveston
Grayson

Gregg
Hale
Harris
Harrison
Hidalgo
Hopkins
Hunt
Jefferson
Jim Hogg
Jim Wells
Johnson
Kaufman
Kleberg
Lamar
Lampasas
Lubbock
McLennan
Midland

Montgomery
Moore
Nueces
Orange
Parker
Potter
Randall
San Patricio
Smith
Tarrant
Taylor
Tom Green
Travis
Val Verde
Victoria
Ward
Webb

Appendix C:

COUNTY JAILS INCLUDED IN SURVEY FINDINGS

Anderson
Andrews
Bell
Bexar
Brazoria
Cameron
Chambers
Collin
Coryell
Dallas
Deaf Smith
Denton
Ellis
Fort Bend

Galveston
Grayson
Gregg
Hale
Harris
Harrison
Hidalgo
Jefferson
Johnson
Kaufman
Kleberg
Lamar
Lampasas
Lubbock

McLennan
Midland
Montgomery
Nueces
Orange
Potter
Randall
Smith
Tarrant
Taylor
Tom Green
Travis
Webb

